APPEAL OF THE PLANNING COMMISSION APPROVAL OF A USE PERMIT TO ESTABLISH AN 11,448-SQUARE FOOT MEDICAL CANNABIS CULTIVATION FACILITY IN AN INDUSTRIAL, GENERAL (IG) ZONE LOCATED AT 1903 NAVY DRIVE

RECOMMENDATION

Staff recommends the City Council deny the appeal and uphold the Planning Commission’s approval of a Use Permit to allow the establishment of a proposed medical cannabis cultivation facility for property in an Industrial, General (IG) Zone located at 1903 Navy Drive in accordance with the findings detailed herein.

Summary

The City Council is asked to consider an appeal of the Planning Commission approval of a Use Permit to establish a medical cannabis cultivation site in an existing building located at 1903 Navy Drive (Attachment A - Appeal Application). This project complies with all requirements of SMC 16.80.195 Medical Cannabis Business Permitting. The Use Permit was approved by the Planning Commission at the September 14, 2017 hearing. An appeal of Planning Commission’s decision was made on September 20, 2017 by Lori Toccoli, the business owner of a neighboring property at 1905 Navy Drive.

The applicant, Douglas Chloupek, submitted a Conditional Use Permit application with all required materials (floor plan, site plan, neighborhood context map, security and lighting plan) to establish an 11,448-square foot medical cannabis cultivation facility in an IG Zone, located in an existing warehouse at 1903 Navy Drive. The cultivation space will be 11,448 square feet, well under the 22,000-square foot maximum under Stockton Municipal Code (SMC) 16.80.195(B)(6). No new construction or expansion was proposed.

The site meets all requirements under SMC Section 16.80.195 (Medical Cannabis Businesses), including separation requirements from sensitive uses (see table below).

MINIMUM SEPARATION REQUIREMENTS

<table>
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<tr>
<th>Requirement</th>
<th>Distance</th>
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<tr>
<td>300 feet from any existing residential zones</td>
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<tr>
<td>600 feet from any childcare center, child care, in-home, (family day-care home), religious facility, drug abuse or alcohol recovery/treatment facility, or theaters</td>
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<tr>
<td>1000 feet from any park or K-12 School</td>
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<tr>
<td>1000 feet from any other medical cannabis business or site with a valid Use Permit</td>
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NOT RESTRICTIONS

<table>
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<th>Use Permit required</th>
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<td>Operator Permit required</td>
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<tr>
<td>Maximum of two (2) dispensaries and two (2) cultivation sites per Council District</td>
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<td>Maximum of four (4) medical cannabis cultivation facilities in City</td>
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<td>22,000 square foot maximum for cultivation area</td>
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Therefore, staff recommends that the Planning Commission approve the application based on the recommended findings of fact in the Proposed Resolution.

DISCUSSION

Background

On August 24, 2010, the City Council adopted ordinances to allow medical cannabis dispensaries in selected zoning districts and to regulate the operations and employee permit requirements for such dispensaries. On May 9, 2013, the ordinance was amended prohibiting new medical cannabis dispensaries.

On June 28, 2016, the Stockton City Council approved placing two ballot measures on the November 8, 2016, General Election ballot that would overturn the ban on medical cannabis dispensaries and increase the number of allowed dispensaries citywide, allow medical cannabis cultivation businesses within the City (Measure P), and allow for the increase of business license tax on medical cannabis and related businesses (Measure Q). Both measures were submitted to the voters for approval on November 8, 2016 and were passed.

Measure P:

- Overturned the previous ban on new medical cannabis dispensaries;
- Allows up to four (4) medical cannabis dispensaries in certain commercial and industrial zones [the previous municipal code allowed for three (3) dispensaries and two (2) are currently operating];
- Allows up to four (4) cultivation sites in industrial zones;
- Imposes location restrictions for dispensaries and cultivation operations, including distances from sensitive locations;
- Requires a Conditional Use Permit, Operator's Permit, and permits for all employees;
- Does not allow dispensary owners/operators to own/operate cultivation operations within the City.
The applicant Douglas Chloupek is applying for a Conditional Use Permit to operate an 11,448-square foot medical cannabis cultivation facility in an IG Zone located at 1903 Navy Drive. Per SMC Section 16.20.020, Table 2-2, Allowable Land Uses and Permit Requirements, a Use Permit is required for the subject use. The 0.8-acre project site is occupied by an existing warehouse and is bounded to the north, south, east, and west by various industrial uses. (Attachment B - Zoning Map). No new exterior construction or expansion has been proposed.

The facility will hire 15 full time employees for day-to-day operations. The cultivation facility will operate between 7:00 a.m. and 8:00 p.m. Monday through Friday. No one under the age of 18 will be allowed on premises (Attachment C - Project Description).

Security Plan

The Stockton Police Department reviewed the required security plan for the 1903 Navy Drive cultivation facility. The proposed security plan meets the police department standards and includes provisions for security guards, access controls, video surveillance, and lighting.

As a condition of the Use Permit, staff will visit the facility after a 12-month period to ensure compliance with applicable restrictions of the Development Code and conditions of the Use Permit.

Location Restrictions

The following location requirements apply to all medical cannabis cultivation sites and may not be waived or modified by conditional use permit, variance, or site plan and design review approval, SMC 16.80.195.B.3:

a. No medical cannabis cultivation site shall be established or located within 1,000 feet, measured from the nearest property lines of each of the affected parcels, of any other medical cannabis business or site having a valid use permit for a medical cannabis business;
b. No medical cannabis cultivation site shall be established or located within 300 feet, measured from the nearest property lines of each of the affected parcels, of any existing residential zone;
c. No medical cannabis cultivation site shall be established or located within 600 feet, measured from the nearest property lines of each of the affected parcels, of any childcare center, childcare, in-home (family day care home), religious facility, drug abuse, alcohol recovery/treatment facility, or theater;
d. No medical cannabis cultivation site shall be established or located within 1,000 feet, measured from the nearest property lines of each of the affected parcels, of any park or...
school, K-12;

e. All medical cannabis cultivation sites must be located within a fully-enclosed building and the interior of the building must not be visible from the public right-of-way.

The applicant is required to submit a neighborhood context map showing all required separation distances to determine if there are any sensitive uses in proximity to the cultivation facility (Attachment D - Neighborhood Context Map). Staff also conducted an analysis of the area using a City mapping system which shows schools, parks, day care centers, and residential zones (Attachment E - Cultivation Map & Cannabis Businesses). To verify separation from uses not tracked in the City database, staff conducted a site visit of the surrounding area and determined that the location met all separation requirements. Staff routed the project documents to the school district and other local agencies and received no comments. The site is surrounded primarily by Industrial uses.

There are no other medical cannabis businesses or sites having a valid use permit for a medical cannabis business within 1,000 feet. The closest Residential Zone and single-family residences are approximately 900 feet north of the subject property and are separated by train tracks to the North.

No childcare center, child care, in-home (family day care home), religious facility, drug abuse, alcohol recovery/treatment facility, or theater is located within 600 feet of the site, no is there any park or K-12 school located within 1,000 feet. The proposed facility will be located within a fully-enclosed building and the interior will not be visible from the public right-of-way. Therefore, the site complies with all location standards.

There are currently three (3) cultivation operating permits available as of the date of this hearing. To date, there is one cultivation facility with a valid Use Permit and an Operating permit in council district 5, located at 633 San Juan Ave.

**Access, Circulation, Parking**

The cultivation facility will be in an existing industrial warehouse. The parking requirement for medical cannabis cultivation facilities is 1 space per 500 square feet of floor area. The 11,448-square foot facility would require 22 spaces (Attachment F- Parking and Site Plan). The applicant has proposed 22 parking spaces, the parking plan is consistent with SMC16.64.080 Development Standards for Off Street Parking, providing trees at a rate of 1 per 5 spaces and all ends of the parking lanes will have landscaped islands.

Because the facility is not open to the public, parking provided at this location will primarily be used for employees and the occasional visitors (inspectors).

**FINDINGS**

There are seven General Findings in SMC Section 16.168.050.A., which are required to approve a use permit: maintaining the integrity and character of the applicable zoning district; consistency with applicable General Plan objectives and policies; physical suitability of the site for the proposed use; not endangering or jeopardizing the public health, safety, peace, or general welfare of the public; compatibility with surrounding uses; and consistency with the California Environmental Quality Act. As indicated in the Proposed Resolution, these findings can be made in the affirmative.
PUBLIC COMMENT/NEIGHBORHOOD MEETING

A community meeting was held on May 16, 2017. The meeting notice was mailed by the applicant to all property owners within a 300-foot radius of the subject property (Attachment G - Public Meeting Notice/Notes). According to the applicant, 11 people attended the meeting and expressed substantial opposition to the cultivation facility. On August 14, 2017, the applicant mailed a letter to the neighboring businesses, some of whom were in opposition to the project, to further discuss their concerns and have received no responses to date (Attachment H - Neighbor Follow Up Letters).

EXTERNAL COMMUNICATIONS

Staff was presented with three (3) letters of opposition at the July 13, 2017 Planning Commission meeting from neighboring business owners (Attachment I - Opposition Letters).

PLANNING COMMISSION ACTION

The Planning Commission considered the application over multiple meetings to obtain additional information from staff and resolve questions. The first question related to an access easement shared by 3 parcels, including the subject property at 1903 Navy Drive. The commissioners also requested crime statistics for the subject area and information on the effects of medical cannabis businesses on crime in response to resident opposition presented.

The following findings were presented to the Planning Commission. On the matter of site access, 1903, 1905, and 1917 Navy Drive are served by an access easement belonging to 1917 Navy Drive. All properties have unrestricted access and are not dependent on one another to utilize that access. The access easement can only be removed if the dominant estate, in this case 1903 and 1905 Navy Drive, terminates its rights by release or a single property owner owns all 3 parcels.

The 3-year crime average in this police reporting district (0131) is 55.29% below the Stockton average. Of the nine (9) calls for service at 1903 and 1917 Navy Drive from calendar year 2016-17, only two (2) resulted in a crime report (Attachment J - Calls for Service Navy Drive). There were no calls for service at 1905 Navy Drive. According to the Stockton Police Department, this area would not be classified as a high crime area.

Because legal medical cannabis cultivation is a very new industry, little data exists on the effect of legal cultivation businesses on crime rates. The Stockton Police Department explained that they have very limited data on illegal grow operations. Illegal grow operations and the criminal enterprises that are associated with them cannot be compared to permitted legal cultivation sites operating under Conditional Use Permits that include requirements for security plans and monitoring by the City. Based on available research, it appears that studies on medical cannabis and its effects on crime focused on dispensaries rather than cultivation facilities. Legal dispensaries are a better comparison to cultivation facilities as they store the same product on site and are legally operating. Medical cannabis dispensaries have been shown to have very little if any effect on crime (Attachment K - Medical Cannabis Studies). Further there has been only one (1) call for service from August 2016 to August 2017 from Stockton’s two legal non-conforming dispensaries (Attachment L - Dispensary Calls for Service).
At the August 17, 2017 Planning Commission Hearing, staff addressed the Planning Commission’s questions, detailed above, regarding the access easement, crime at the site of the proposed cultivation facility, and the potential effects of cannabis business on crime.

The applicant spoke, addressing the concerns of his neighbors and the Planning Commission questions. He spoke about his attempts to reach out to his neighbors and schedule a time to meet and address their concerns, without success.

Two members of the public spoke in favor of the project speaking to the tax revenue benefits and emerging research on the benefits of medical cannabis on childhood illnesses.

There were five requests to speak in opposition of the project. After hearing the applicant’s presentation one of the members of the public in opposition of the project changed their position to “neutral”. The persons in opposition argued that this use would bring more crime into the area. Lori Toccoli stated the tax rate would be lower for the medical cannabis business and that her business pays more taxes. Mrs. Toccoli also argued that the business would not generate the maximum tax revenue to the City due to the size of the operation, the nature of the business would negatively affect her business, and the access easement could be compromised at any time by Federal Agencies.

The applicant was permitted to respond to the opposition. He stated that the tax rate was set by the City Council at 5%, there are no exceptions for medical cannabis businesses. The proposed location for the medical cannabis cultivation site was not considered a high crime area by the Stockton Police Department, he cited numerous studies that show medical cannabis businesses have little to no effects on the crime rates of their surrounding communities, and stated occupying a vacant building, providing 24-hour surveillance and security, would only serve to improve the neighborhood.

Following the public testimony, the Commission approved a resolution allowing the establishment of a medical cannabis cultivation facility at 1903 Navy drive (5-2).

Appeal

On September 20, 2017, Lori Toccoli with Stockton Petroleum, a neighboring business of 1903 Navy Drive, filed an appeal of the Planning Commission’s approval for various reasons including site access, decreased potential revenue to the City because of the size of the facility, and a potential increase crime. The City Council may uphold the Commission’s action and approve the Use Permit or override the Commission’s action with five concurring votes, in accordance with the provisions of SMC Section 16.100.040.G.1.

ENVIRONMENTAL CLEARANCE

The proposed use qualifies for a California Environmental Quality Act (CEQA) Categorical Exemption under section 15301 Class 1, Existing Facilities. The proposed project is utilizing an existing 11,448 SQFT industrial building, no expansion or additions are proposed. There is no substantial evidence that the proposed project involves unusual circumstances, including future activities, resulting in or which might reasonably result in significant impacts which threaten the environment.
FINANCIAL SUMMARY

There is no anticipated financial impact to the City as a result of the current item.

Attachment A - Appeal Application
Attachment B - Zoning Map
Attachment C - Project Description
Attachment D - Neighborhood Context Map
Attachment E - Cultivation Map & Cannabis Businesses
Attachment F - Parking and Site Plan
Attachment G - Public Meeting Notice
Attachment H - Neighbor Follow Up Letters
Attachment I - Opposition Letters
Attachment J - Calls for service Navy Drive
Attachment K - Medical Cannabis Studies
Attachment L - Dispensary Calls for Service